IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LEWIS COUNTY, Appellant, v. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD, EUGENE BUTLER, EDWARD G. SMETHERS, DOUGLAS H. HAYDEN, ANNETTE H. YANISCH, BRENDA BOARDMAN, DOROTHY L. SMITH, DEBRA ERTEL BURRIS, MICHAEL T. VINATIERI, DEANNA M. ZIESKE, VINCE PANESKO, JOHN T. MUDGE, EVALINE COMMUNITY ASSOCIATION, SUSAN ROTH, RICHARD ROTH, KAREN KNUTSEN, and VALERIE GORE, Respondents.	)	No. 76553-7 En Banc Filed August 10, 2006

ALEXANDER, C.J.—After failing four times to satisfy the Western Washington Growth Management Hearings Board (Board) that it properly designated agricultural lands for conservation under the Growth Management Act (GMA), chapter 36.70A RCW, Lewis County now asks us to reverse the latest Board orders rebuffing its efforts. We conclude that the Board incorrectly defined agricultural land in reviewing Lewis County's 2003 ordinances. Accordingly, we reverse the Board's conclusion that the

county violated the GMA by focusing on the farm industry's projected needs, rather than on soil and land characteristics, in designating agricultural lands for conservation. We also remand the case to the Board to determine whether the county's designations of agricultural land comply with the GMA, using the correct definition of agricultural land.[1] We conclude, however, that the Board did not err by invalidating the ordinances that: (a) allowed non-farm uses within designated agricultural lands, and (b) excluded "farm centers" and farm homes from those lands. Therefore, we partially affirm the Board's orders.

I

[1]We disagree with the dissent's assertion that this court should "instruct the Board to remand to Lewis County to allow the county and its legislative body to correct the designations of land given this new definition." Dissent at 8. First of all, we are not establishing a "new definition." The legislature defined agricultural land when it adopted RCW 36.70A.030(2). We are simply interpreting that definition, using traditional tools of statutory construction in order to resolve the present dispute over what the legislature meant in adopting RCW 36.70A.030(2). Secondly, the GMA already requires the Board to remand to the county any regulation or plan that is determined to be noncompliant. RCW 36.70A.300(3). Therefore, to the extent that Lewis County's designation of 54,400 acres of agricultural land turns out to be off the mark, the GMA already ensures that the county will decide how to correct that problem. In that sense, we do not disagree with the dissent. Besides, because we affirm the Board's other findings of noncompliance, Lewis County already will have to reconsider its approach to conserving designated lands. Finally, although we conclude that both the Board and Lewis County misinterpreted the definition of agricultural land in RCW 36.70A.030(2), that does not necessarily mean that Lewis County designated the wrong parcels (or too few of them). The extent to which the designated parcels match the actual definition of agricultural land is a compliance question, and therefore is properly directed to the Board, the agency charged with determining GMA compliance. RCW 36.70A.320(3). It seems that the dissent would bypass the Board and allow counties to decide whether their own actions comply with the GMA. For example, the dissent complains that these "unelected boards" may "micromanage land use plans for counties." Dissent at 1 n.1. While bypassing the Board certainly would promote the dissent's goal of "allowing the . . . local government to govern" it would contradict the intent of the legislature for a quasi-judicial body to evaluate GMA compliance. Dissent at 8.

Lewis County has long struggled to meet GMA requirements to designate and conserve agricultural lands. In June 2000, March 2001, and July 2002, the Board found the county's efforts noncompliant.

In response to the Board's September 8, 2003, deadline to achieve GMA compliance, the county staff prepared a report explaining how it identified agricultural lands to be conserved. The 2003 staff report said that of the 1,117 farms existing in Lewis County as of the 1997 census, only 176 farms had gross sales of $25,000 or more, and only 161 of them were larger than 180 acres. The report also said that of about 150,000 acres eligible for agricultural designation based on soil type, about 50,000 had no recent agricultural activity. The report described a decline in dairies and field crops, an absence of "significant clusters" of organic farms, and a poultry industry constrained by a lack of water rights. Clerk's Papers (CP) at 242. The report also said no land conservation was needed for the hay and Christmas tree industries because they do not depend on soil, and "[g]rass hay in particular is a marginal operation, in that in good years the return is often barely enough to pay taxes on the property." *Id*. at 254. Finally, the staff report said most Lewis County farms are not economically self sufficient and therefore need "non farm income" for survival. *Id*. To address that need, the report recommended allowing each farm to have a "farm center" of up to five acres where rural commercial and industrial uses would be allowed. *Id*. at 255.

The Lewis County Planning Commission held public hearings and approved the staff report almost entirely. It recommended that the Lewis County Commission designate

54,500 acres of agricultural land, "appropriate in location and amount to reasonably conserve the land-based needs of the commercial agriculture industry for the foreseeable future."[2] *Id*. at 283. On September 8, 2003, the Lewis County Commission adopted by ordinance the planning commission findings and most of its recommendations, along with maps designating an agricultural zone of about 54,400 acres. And while prohibiting certain non-farm land uses, the commission allowed others—including residential subdivisions, home-based businesses and telecommunication facilities—to be located in agricultural lands as long as they met certain conditions.[3] The ordinances designated 13,767 of "Class A" farmlands, characterized by prime farm soils, over 40,000 acres of "Class B" farmlands, and "[f]armlands of [l]ocal [i]mportance." *Id*. at 670. The commission removed some lands from designation because they: (1) had "already been divided," (2) "lost irrigation rights," or (3) were "isolated and in areas where land development and potential changes create the potential for conflict and . . . significant change." *Id*. at 283. The latter included lands near Interstate 5 where the county wants to attract "major industry." *Id*.

The county's designation of 54,400 acres of agricultural lands, as compared with 66,000 acres receiving special agricultural tax status and 283,000 acres of land with prime farm soils in Lewis County, was controversial. In January 2004, the Board held a hearing to review citizen petitions challenging the county's 2003 actions and to determine GMA

[2]Planning Commissioners ultimately recommended conserving 2,800 acres fewer than the county staff had recommended.

[3]One condition was to "not adversely affect the overall productivity of the farm nor affect any of the prime soils on any farm." CP at 381.

compliance.[4] The citizen petitioners, using soil and aerial maps, claimed to identify 140,645 acres that were currently or recently used for agriculture and that should have been conserved. In February 2004, the Board issued a 49-page order concluding that Lewis County still failed to comply with the GMA. The Board reasoned as follows:

> The GMA defines the requirements for designating natural resource lands based on the characteristics of the lands. Instead of basing its designation decisions on the characteristics of agricultural land, Lewis County focused its decision-making on its assessment of the needs of the local agricultural industry . . . . Historically, in Lewis County as well as in other counties, the agricultural industry has changed as the market for agricultural products changed. Agricultural economists are not able to predict which products will be in demand next year, let alone for the foreseeable future. The legislature, therefore, did not tie the designation of agricultural lands to economic conditions which shift unpredictably but to the characteristics of the land. The moving concern underlying the GMA's requirement for designation and conservation of agricultural lands is to preserve lands capable of being used for agriculture because once gone, the capacity of those lands to produce food is likely gone forever.

CP at 634. The Board invalidated the ordinances and maps that: (a) designated the agricultural lands to be conserved, (b) excluded "'farm centers'" and farm homes from designated agricultural lands, (c) allowed nonagricultural uses on the designated lands, and (d) required "'sufficient irrigation capability'" for designation as Class A farmland.[5] CP at 674, 675. In a May 2004 order on reconsideration, the Board said that "until the County utilizes a compliant approach . . . potential agricultural resource lands in the rural zones

[4]Petitioners included Vince Panesko, Eugene Butler, and 14 other respondents in this case.

[5]The Board found that only 5,765 of the 117,767 acres being farmed in Lewis County as of 1997 were irrigated.

must be preserved from incompatible development so that they will be *available* for assessment under a compliant approach."[6] *Id*. at 684.

Lewis County appealed both 2004 orders to the Lewis County Superior Court. On December 23, 2004, the superior court affirmed the Board's orders, agreeing with the Board that "the . . . 'needs of the industry' argument is clearly erroneous" and that "the definition of long-term significance refers to the growing capacity and productivity of the soil." *Id*. at 10. We granted review.

II

The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations. RCW 36.70A.280, .302. The Board "shall find compliance" unless it determines that a county action "is clearly erroneous in view of the entire record before the board and in light of the goals and requirements" of the GMA. RCW 36.70A.320(3). To find an action "clearly erroneous," the Board must have a "firm and definite conviction that a mistake has been committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993). On appeal, we review the Board's decision, not the superior court decision affirming it. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000) (hereinafter referred to

[6]The reconsideration order also reversed the Board's invalidation of maps designating Class A and Class B farmlands, finding that those lands were adequately protected pending full compliance. But the order upheld the invalidation of maps designating "Class C" farmlands in rural zones—citing concerns that land with prime soils or recent farming activity could be lost to non-farm development in the absence of agricultural zoning.

as *Soccer Fields*). "'We apply the standards of RCW 34.05 directly to the record before the agency, sitting in the same position as the superior court.'" *Id*. (quoting *City of Redmond v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 45, 959 P.2d 1091 (1998)).

The legislature intends for the Board "to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of" the GMA. RCW 36.70A.3201. But while the Board must defer to Lewis County's choices that are consistent with the GMA, the Board itself is entitled to deference in determining what the GMA requires. This court gives "substantial weight" to the Board's interpretation of the GMA. *Soccer Fields*, 142 Wn.2d at 553.[7]

Under the Administrative Procedure Act (APA), chapter 34.05 RCW, a court shall grant relief from an agency's adjudicative order if it fails to meet any of nine standards delineated in RCW 34.05.570(3). Here, Lewis County asserts that the Board erroneously applied the law, warranting relief under RCW 34.05.570(3)(d), and engaged in an unlawful decision-making process. RCW 34.05.570(3)(c). The burden of demonstrating that the Board erroneously applied the law or failed to follow prescribed procedure is on the party asserting error. *Soccer Fields*, 142 Wn.2d at 553.

[7]The dissent wrongly summarizes the Board's role as merely this: "to ensure that the proper legislative bodies under the GMA are making the decisions mandated," as if *any* decisions will do. Dissent at 7. Actually, the Board is empowered to determine whether county decisions comply with GMA requirements, to remand noncompliant ordinances to counties, and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance. RCW 36.70A.300(3), .320(3), .302(1). In other words, the Board is more than a deskbook dayminder telling counties what decisions are due.

Our review of issues of law under RCW 34.05.570(3)(d) is de novo. *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 8, 57 P.3d 1156 (2002). "On mixed questions of law and fact, we determine the law independently, then apply it to the facts as found by the agency." *Id*. (citing *Hamel v. Employment Sec. Dep't*, 93 Wn. App. 140, 145, 966 P.2d 1282 (1998), *review denied*, 137 Wn.2d 1036 (1999)).

III

Under the GMA, Lewis County must designate "[a]gricultural lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products." RCW 36.70A.170(1)(a). In addition, the county must adopt development regulations "to assure the conservation of" those agricultural lands designated under RCW 36.70A.170. RCW 36.70A.060(1).[8] The parties in this case offer contrary definitions of the lands subject to these requirements. As a threshold matter, then, we must identify the correct definition of "agricultural lands" under the GMA.

Lewis County designated agricultural lands based on its own definition: "those lands necessary to support the current and future needs of the agricultural industry in Lewis County, based upon the nature and future of the industry as an economic activity and not on the mere presence of good soils." CP at 418. The Board called the county's definition clearly erroneous, saying, "We note that throughout the GMA and the court decisions construing it the focus is on the nature of the *land*, not on the nature

[8]Lewis County became subject to GMA planning mandates in July 1993 and first designated agricultural lands in 1996. Until 1996, the county had no zoning laws at all.

of the agricultural industry that is using the land at any given time." *Id*. at 640. The Board also said "[t]he GMA calls for designation of agricultural lands based on characteristics of the land" that affect long-term production capability. *Id*. But to be guided strictly by the physical nature of the land would stifle economic development in counties like Lewis, which have a significant amount of potentially good farmland, much of which is unproductive. For reasons set forth below, we conclude that the Board's and county's definitions of agricultural land are both incorrect.

The GMA defines agricultural land as "land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees . . . or livestock, and that has long-term commercial significance for agricultural production." RCW 36.70A.030(2). Thus, the legislature established that agricultural lands are those which (1) are "primarily devoted to" commercial agricultural production, and (2) have "long-term commercial significance" for such production. RCW 36.70A.030(2). We now turn to what these terms mean.

This court previously addressed the meaning of the term "primarily devoted to" in *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 959 P.2d 1091 (1998) (hereinafter referred to as *Benaroya* I),[9] a case in

[9]The issue in *Benaroya* I was whether a landowner must intend for the land to be "devoted to" agriculture to be subject to designation. We said, "While the land use on the particular parcel and the owner's intended use for the land may be considered along with other factors in the determination of whether a parcel is in an area primarily devoted to commercial agricultural production, neither current use nor landowner intent of a particular parcel is conclusive for purposes of this element of the statutory

which landowners challenged designation of their land as agricultural. We said there that land is primarily "'devoted to'" commercial agricultural production "if it is in an area where the land is actually used or capable of being used for agricultural production," and that a landowner's intended use of land is not conclusive. *Id*. at 53.

In the present case, the Board relied partly on the aforementioned language in concluding that Lewis County improperly excluded from designation those lands that are "capable of being used" for farm production. CP at 637. But *Benaroya* I dealt only with whether land is "'primarily devoted to'" farming under RCW 36.70A.030. *Benaroya* I, 136 Wn.2d at 49. The other question in designating agricultural land, neglected by the Board in this case, is whether land also has "long-term commercial significance" for farm production.

The GMA says that long-term commercial significance "includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, *in consideration with* the land's proximity to population areas, and *the possibility of more intense uses of the land*." RCW 36.70A.030(10) (emphasis added). Thus, counties must do more than simply catalogue lands that are physically suited to farming. They must consider development prospects (the "possibility of more intense uses") in determining if land has the enduring commercial quality needed to fit the agricultural land definition.

While this court has not previously interpreted RCW 36.70A.030(10), we

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definition." *Benaroya* I, 136 Wn.2d at 53.

approve of the approach used by the Court of Appeals in *Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 959 P.2d 1173 (1998), *review denied*, 137 Wn.2d 1018 (1999). In *Manke*, Mason County challenged a Board decision to invalidate its designation of forest lands, subject to the same GMA conservation requirements as agricultural lands. In holding that the Board erred, the court relied largely on WAC 365-190-050,[10] a Washington Department of Community, Trade and Economic Development regulation designed to guide counties in determining which agricultural and forest lands have "long-term commercial significance." That regulation says that counties

> shall also consider the combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:
> (a) The availability of public facilities;
> (b) Tax status;
> (c) The availability of public services;
> (d) Relationship or proximity to urban growth areas;
> (e) Predominant parcel size;
> (f) Land use settlement patterns and their compatibility with agricultural practices;
> (g) Intensity of nearby land uses;
> (h) History of land development permits issued nearby;
> (i) Land values under alternative uses; and
> (j) Proximity of markets.

WAC 365-190-050(1).[11] The court in *Manke* determined that the Board misapplied the

[10]The decision refers to WAC 365-190-060 but cites language identical to the current WAC 365-190-050.

[11]Interestingly, while the State of Washington's amicus brief argues that the "structure" of WAC 365-190-050 supports the primacy of soil characteristics, it does not mention the extensive text devoted to these development-related considerations that have nothing to do with soil. State's Amicus Curiae Br. at 10. Besides, the regulation's structure merely mirrors the order in which the underlying statute, RCW

GMA, and that the county could limit forest land designations to parcels of at least 5,000 acres that have a forest tax classification because the guidelines allow consideration of "predominant parcel size" and "tax status" in determining long-term significance. *See Manke*, 91 Wn. App. at 807-08.

In sum, based on the plain language of the GMA and its interpretation in *Benaroya* I, we hold that agricultural land is land: (a) not already characterized by urban growth (b) that is primarily devoted to the commercial production of agricultural products enumerated in RCW 36.70A.030(2), including land in areas used or capable of being used for production based on land characteristics, *and* (c) that has long-term commercial significance for agricultural production, as indicated by soil, growing capacity, productivity, and whether it is near population areas or vulnerable to more intense uses. We further hold that counties may consider the development-related factors enumerated in WAC 365--190-050(1) in determining which lands have long-term commercial significance. We, therefore, remand this case for the Board to apply the correct definition of agricultural land in determining whether Lewis County's 2003 ordinances complied with RCW 36.70A.170(1).

IV

The respondent citizens in this case argue that "[n]owhere in the GMA or in the implementing WACs is there authority to limit agricultural resource lands designations using an industry needs assessment." Br. of Resp'ts at 10. While it is true that no

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36.70A.030(10), lists the factors to consider in determining long-term commercial significance. Neither the statute nor the regulation purports to prioritize those factors.

statute specifically authorizes counties to weigh industry needs above all other considerations in designating and conserving agricultural land, this does not mean the GMA prohibits such an approach. As noted above, the GMA's stated intent is to recognize the "broad . . . discretion" of counties to make choices within its confines. RCW 36.70A.3201. Because the GMA does not dictate how much weight to assign each factor in determining which farmlands have long-term commercial significance, and because RCW 36.70A.030(10) includes the possibility of more intense uses among factors to consider, it was not "clearly erroneous" for Lewis County to weigh the industry's anticipated land needs above all else. If the farm industry cannot use land for agricultural production due to economic, irrigation or other constraints, the possibility of more intense uses of the land is heightened. RCW 36.70A.030(10) permits such considerations in designating agricultural lands. Indeed, *Manke* involved some of the same considerations cited in the Lewis County staff report, undersized parcels and possible conflicts with nearby development. Therefore, the Board erred in concluding that Lewis County violated the GMA by designating agricultural lands based on the local farm industry's anticipated needs.

However, we do not decide whether Lewis County, in focusing on the needs of the local agriculture industry, went beyond the considerations permitted by WAC 365-190-050 and RCW 36.70A.030 in designating agricultural lands. Unfortunately, Lewis County's briefs do not explain the extent to which the county applied the specified factors.[12] And while Lewis County Ordinance 1179C does spell out in detail how the

county considered WAC 365-190-050 factors in mapping agricultural lands,[13] the record does not indicate whether the county used permissible criteria in other decisions not explicitly tied to the WAC factors. For example, in not designating Christmas tree farms as agricultural land because they do not depend on a particular soil type, the county could have been considering the soil composition factor listed in RCW 36.70A.030(10). But in light of the Christmas tree industry's relatively robust $19.8 million in annual sales, it is not apparent why Lewis County would "consider" soil in this way, excluding productive tree farms from designated agricultural lands simply because they don't need the types of prime

[12]Rather than focusing on the mandates of RCW 36.70A.060 and .170 to designate and conserve agricultural lands as defined in RCW 36.70A.030, the county's opening brief, reply brief, and its answer to the amicus brief of Futurewise inexplicably dwell on GMA "planning goals," which merely offer guidance. *See* RCW 36.70A.020 ("The following goals are adopted *to guide* the development and adoption of comprehensive plans and development regulations . . . ." (emphasis added)). The county's line of argument is misguided. *Quadrant Corporation v. Central Puget Sound Growth Management Hearings Board* held that when there is a conflict between the "general" planning goals and more specific requirements of the GMA, "the specific requirements control." *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 119 Wn. App. 562, 575, 81 P.3d 918 (2003), *rev'd in part on other grounds*, 154 Wn.2d 224, 110 P.2d 1132 (2005); *see also Quadrant Corp.*, 154 Wn.2d at 246 (2005) (this court "did not rely on the applicable goal in isolation nor did it hold the goals to independently create substantive requirements"). Thus, the county is mistaken in its apparent belief that the general goal in RCW 36.70A.020(8) is the test for defining agricultural lands.

[13]For example, the county said it considered growing capacity and productivity by requiring agricultural land to have certain soil types, as well as sufficient irrigation capability "to grow the primary agricultural crops produced in Lewis County." CP at 378. The county considered predominant parcel size by requiring agricultural land to be at least 20 acres (for economic viability), or to meet the United States Department of Agriculture definition of "commercial" agriculture. The county considered availability of public facilities and services by requiring agricultural lands to be located outside areas where urban-level services are "conducive to the conversion" of farmland. *Id*. at 379.

soil that other farm sectors need. Thus, upon remand, when the Board reviews whether Lewis County properly designated agricultural lands, the inquiry should include whether the county's decisions were "clearly erroneous" in light of the considerations outlined in RCW 36.70A.030 or WAC 365-190-050.

V

While most of the county's designation decisions at least possibly could have been based on permissible criteria,[14] we note one exception. In excluding "farm centers" and farm homes from designated agricultural lands,[15] the county sought "to serve the farmer's non-farm economic needs." Opening Br. at 30. Serving the farmer's "non-farm" economic needs is not a logical or permissible consideration in designating agricultural lands under the GMA. That is because it is a goal in and of itself, not a characteristic of farmland to be evaluated in determining whether such land has long-term commercial significance. A farmer's presumed need for "non-farm" income does not necessarily relate to soil, productivity or growing capacity under RCW 36.70A.030(10), nor to proximity to population areas or the possibility of more intense uses of land. It has to do only with the farmer's bottom line. And while we share Lewis County's concern for the struggles farmers often face, we note that the GMA is not intended to trap anyone in economic failure, as evidenced by the mandate to conserve only those farmlands with long-term commercial

[14]For example, in finding that farms need gross sales of $25,000 or more for potential long-term significance, the county could have been considering "productivity" of the land or the "possibility of more intense uses" pursuant to RCW 36.70A.030(10). It is not necessarily error to assume that farms with meager income are likely to succumb to development pressures. Similarly, in finding that farms smaller than 180 acres may not be cost effective, the county could have been considering productivity, the possibility of more intense uses, or "predominant parcel size."

[15]While the county's briefs discuss this issue in the context of zoning choices, the Board correctly treated it as a designation issue. The Board found that excluding farm homes and farm centers from designated agricultural land was "clearly erroneous" because it "creates isolated pockets of inconsistent zoning in farmlands" and makes adjacent lands vulnerable to de-designation. CP at 649, 675.

significance. The problem with the county's approach is that *any* farmer could convert *any* five acres of farmland to more profitable uses, even if such conversion would remove perfectly viable fields from production. Thus it was clearly erroneous for Lewis County to exclude from designated agricultural lands up to five acres on *every* farm, without regard to soil, productivity or other specified factors in each farm area. [16] Accordingly, we affirm the Board's invalidation of the blanket exclusion of five-acre farm centers and farm homes from designated agricultural lands.

VI

Having discussed whether Lewis County properly designated lands under RCW 36.70A.170, we now turn to the RCW 36.70A.060 duty to conserve designated lands. The GMA says in relevant part: "Each county . . . shall adopt development regulations . . . to assure the conservation of agricultural . . . lands designated under RCW 36.70A.170." RCW 36.70A.060(1).

> A county . . . may use a variety of innovative zoning techniques in areas designated as agricultural lands . . . The . . . *techniques should be*

[16]The dissent suggests that a county may designate agricultural land based on a farmer's economic needs or, for that matter, any other factors it deems worthy. Indeed, the dissent repeatedly invokes "discretion" as a mantra, as if the GMA places no bounds on county decisions. Dissent at 1, 2, 12, 14, 17, 22. For example, in defending Lewis County's decision to allow mining, residential subdivisions and other non-farm uses within designated farmlands, the dissent merely recites Lewis County's arguments without reference to the applicable GMA language. But the GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. RCW 36.70A.3201. In other words, there *are* bounds. Furthermore, although we agree with the dissent that counties may consider factors besides those specifically enumerated in RCW 36.70A.030(10) in evaluating whether agricultural land has long-term commercial significance, that is not what happened here. Rather, Lewis County simply decided to serve its own goal, serving the farmer's non-farm economic needs, instead of meeting the GMA's specific land designation requirements.

> *designed to conserve agricultural lands and encourage the agricultural economy*. A county . . . should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

RCW 36.70A.177(1) (emphasis added).

> [T]echniques a county . . . may consider include . . .
> (a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land . . .
> (b) Cluster zoning . . .
> (c) Large lot zoning . . .
> (d) []/quarter zoning . . .
> (e) Sliding scale zoning . . . .

RCW 36.70A.177(2). Thus, counties may choose how best to conserve designated lands as long as their methods are "designed to conserve agricultural lands and encourage the agricultural economy." RCW 36.70A.177(1).

Lewis County contends that the Board ignored RCW 36.70A.177 and mandated that all agricultural land be zoned for agriculture only, thereby imposing a "per se prohibition" on all nonagricultural uses there. Opening Br. at 33. But as the respondent citizens correctly noted, the Board orders contain no such prohibition. Br. of Resp'ts at 24. Rather, the Board concluded that the non-farm uses allowed within farmlands, including mining, residential subdivisions, telecommunications towers and public facilities: (a) "are not limited in ways that would ensure that they do not impact resource lands and activities negatively," and (b) substantially interfere with achieving the GMA goal of maintaining and enhancing the agricultural industry. CP at 676. Furthermore, the Board found that the zoning failed to conserve agricultural land as required by RCW 36.70A.060. For example,

the Board found that: (a) "[t]he failure to regulate farm housing to conserve agricultural prime soils and to prevent residential densities inconsistent with agriculture fails to conserve agricultural lands," (b) "[c]lustered residential subdivisions as currently allowed in the 13,767 acres of Class A Farmlands are not designed to ensure conservation of agricultural lands and encourage the agricultural economy," and (c) "the requirement that these uses not detract from the overall productivity of the resource activity is not sufficient protection." CP at 672. That is different from requiring a particular form of zoning or flatly prohibiting all non-farm uses. In sum, Lewis County has not been stripped of the ability to use innovative zoning techniques pursuant to RCW 36.70A.177, as it contends. Rather, in invalidating the Lewis County ordinance allowing non-farm uses of agricultural lands, the Board was simply making sure that the county's zoning methods are actually "designed to conserve agricultural lands and encourage the agricultural economy" as required by RCW 36.70A.177(1).[17]

The county also argued that the Board failed to heed this court's decision in *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 14 P.3d 133 (2000), which involved whether soccer fields could be located on agricultural

[17]The dissent appears to misperceive the scope of that RCW 36.70A.177 requirement for zoning methods to be "designed to conserve agricultural lands and encourage the agricultural economy." That is simply the standard that a county must meet if it uses an innovative zoning technique to conserve agricultural lands. Confusingly, the dissent asserts that it is also "the standard we use when reviewing a board's determination of noncompliance and invalidity regarding non-resource uses." Dissent at 14. But the standard of review for Board determinations of noncompliance, as already noted, is drawn from the APA. Rather than apply the APA standard of review, the dissent simply offers bare assertions, i.e., "The uses that the Board found noncompliant are actually consistent with the GMA" to justify its conclusion that the Board erred. Dissent at 15.

lands. Opening Br. at 31-32. The county contends that the *Soccer Fields* test is whether a nonagricultural use "unreasonably" prevents agricultural land "from being used for its intended purpose," or "defeat[s]" the county's ability to maintain and enhance the farm industry. Opening Br. at 32. That is not the test. This court said, "In order to constitute an innovative zoning technique consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry." *Soccer Fields*, 142 Wn.2d at 560. "After properly designating agricultural lands . . . the County may not then undermine the Act's agricultural conservation mandate by adopting 'innovative' amendments that allow the conversion of entire parcels of prime agricultural soils to an unrelated use." *Id*. at 561. The court concluded that the soccer field zoning was noncompliant because it "would result in a long-term removal" of agricultural land from agricultural production, possibly never returning to agricultural use. *Id*. at 562. Thus, a zoning technique that allows non-farm uses on designated agricultural lands satisfies the *Soccer Fields* test if it does not undermine the GMA mandate to conserve agricultural lands for the maintenance and enhancement of the farm industry.

Applying the *Soccer Fields* test to this case, the question is whether Lewis County's ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement. This is a question of law, and we give "substantial weight" to the Board's interpretation of the GMA. *Id*. at 553. In concluding that Lewis County's permitting of non-farm uses could "impact resource lands

and activities negatively," and therefore substantially interferes with maintaining and enhancing the farm industry, the Board essentially interpreted the GMA to prohibit negative impacts on agricultural lands and activities. CP at 676. That is consistent with the RCW 36.70A.060 directive to conserve designated agricultural lands, the RCW 36.70A.020(8) goal of maintaining and enhancing the agricultural industry, and the *Soccer Fields* holding that innovative zoning may not undermine conservation. Therefore, the Board did not err in holding that the non-farm uses of agricultural lands failed to comply with the GMA requirement to conserve designated agricultural lands.

VII

In conclusion, as explained above, we reverse the Board's decision that Lewis County may not designate agricultural lands based on the local farm industry's projected land needs. If the State wants to conserve all land that is capable of being farmed without regard to its commercial viability, it may buy the land.

We also remand the case for the Board to apply the correct definition of agricultural land, taking into account whether the county used permissible criteria. However, we affirm the Board's invalidation of the exclusion of farm homes and farm centers from designated agricultural lands because "serving the farmer's non-farm economic needs" is not a permissible consideration. We also affirm the Board's invalidation of non-farm uses within agricultural lands.[18]

[18]Because we decide this case on statutory grounds we do not reach the procedural issues raised by Lewis County.

AUTHOR:

Chief Justice Gerry L. Alexander

WE CONCUR:

Justice Charles W. Johnson	Justice Susan Owens
Justice Barbara A. Madsen	Justice Mary E. Fairhurst
Justice Bobbe J. Bridge	